IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1110 OF 2015

Mohmed Akhtar Haji Ebrahim Pavte .....Applicant
V/s.
The State of Maharashtra ....Respondent

WITH
CRIMINAL APPLICATION N O. 645 OF 2015
IN
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1110 OF 2015

Ahmed Ismail Sallu ….Intervener

IN THE MATTER BETWEEN

Mohmed Akhtar Haji Ebrahim Pavte .....Applicant
V/s.
The State of Maharashtra ....Respondent

Mr. Kamlesh Tiwari for Applicant
Mr. E. B. Dixit i/b Ms. Sudha Dwivedi for intervener
Mr. Y. M. Nakhwa APP for the State.
Mr. Ligade, P.I. Bhoiwada Police Station.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : AUGUST 10, 2015.

PC :

Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. 108 of 2015 registered at Bhoiwada Police Station for offence punishable under

sections 420, 465, 467, 468, 471 & 511 r/w 34 of Indian Penal Code.

2) It is the case of prosecution that on 06/04/2015, Ahmed Ismail lodged a report at the police station contending therein that he is Indian inhabitant residing in West Yorkshire, United Kingdom. That he is the owner of Sallu Manzil. That in order to manage the said property as well as to recover the rents of the said property, he had executed a power of attorney in favour of Yunus Maniyar. On the basis of the said power of attorney, the holder of power of attorney was representing the complainant before several revenue authorities. The property was being managed by Shri. Ahmed Maniyar from 1972 to 2009. Since 1993, his younger brother Musa Ahmed was managing the said property and had taken the power of attorney from the complainant jointly along with his father. After the demise of his father, Shri. Musa was managing the property. It is alleged that Musa had got executed several documents from complainant on 17/06/2011 and one affidavit dated 31/03/2011 and two indemnity bonds dated 05/04/2011 & 17/06/2011. It is specifically alleged that documents were signed by the complainant on the basis of misrepresentation made by accused. He had noticed public notices in Free Press Journal in respect of the said properties. He has finally alleged that

on 08/08/2013, he had issued a notice through his Advocate Shri. Rajiv Sawant that he has not sold the said property to any person for a consideration of Rs. 5,00,000/-. That he has not received any consideration. He has also alleged that on 17/06/2013, he had not entered into any agreement with Mr. Akhtar Pawte i.e. present applicant. It is also alleged that present applicant and Musa Maniyar have obtained signatures by fraud. However, the complaint is concluded by stating that applicant and co-accused have prepared forged and fabricated documents, purportedly signed by the complainant.

3) Learned counsel for the applicant submits that applicant herein has filed Special Civil Suit No. 3455 of 2013 which is pending in City Civil Court at Mumbai. That in the said civil suit, he is seeking a decree of specific performance directing the defendant to execute final conveyance in respect of the suit property. Complainant happens to be defendant in the said civil suit. That complainant had filed his written statement through his constituted power of attorney i.e. Yunus Maniyar. In the written statement, it is specifically contended that complainant had not executed any alleged documents in favour of plaintiff out of his free will, volition and desire. From

the contentions and averments made in the written statement, it is clear that allegations levelled in the F.I.R. are included in the written statement itself. Complainant had knowledge of all these documents in the year 2013 itself. Those documents are brought to the notice of the Court seized with the said civil suit. Offence is registered in April 2015.

4) It is pertinent to note that in the written statement, complainant herein has specifically contended that he had brought all these facts to the notice of the police on 03/09/2013 i.e. when the defendant/complainant had lodged criminal complaint through his Advocate with Joint Commissioner of Police. It is true that all these are disputed facts pending before City Civil Court. Offence is registered almost after more than 2 years, after the complainant had knowledge about the said documents. In view of this, it prima facie appears that the dispute is of a civil nature. Custodial interrogation at this belated stage would not be warranted. In view of this applicant deserves pre-arrest bail. It is made clear that the observations made herein above are restricted to an application under section 438 of Code of Criminal Procedure, 1973 and shall not be considered for quashing of F.I.R., discharge application or at the time of trial. It is also made clear that co-accused in this case shall

not claim parity.

O R D E R

(i) Application is allowed.

(ii) In the event of arrest, applicant be enlarged on bail on furnishing P. R. bond in the sum of Rs. 50,000/- with one or two solvent sureties in the like amount.

(iii) Applicant shall report to concerned police station from 19/08/2015 to 23/08/2015 between 10.00 a.m. to 01.00 p.m. and co-operate with investigating agency to the best of his capacity.

(iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)

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